



TTAB

Filing date: 03/25/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: STARR, MISHA

Application Serial Number: 76716318

Application Filing Date: 05/08/2014

Mark: THEN COMES BABY TRUE TALES OF PARENTHOOD

Date of Publication: 11/04/2014

**REQUEST FOR RECONSIDERATION ON ACTION OF EXTENSION OF TIME TO
OPPOSE AND BRIEF IN SUPPORT THEREOF**

Pursuant to TBMP §211.01, Sabrina Easterling through her Counsel (hereinafter "Opposer") hereby requests reconsideration or modification of the order of the TTAB issued on March 18, 2015, in denying the Extension of Time to Oppose filed on March 4, 2015. In support of this motion Opposer sets forth the following:

1. Opposer and Applicant through their Counsel (hereinafter "Applicant") were in active settlement discussions at the time the second request for an extension of time to oppose was set to expire on March 4, 2015.



U.S. Patent & TMO/TM Mail Rpt Dt. #22

2. Applicant consented to extend the time to oppose for an additional 30 days to finalize settlement discussions.
3. Upon review of Rule 37 CFR 2.102(c), which reads, in part, “The time for filing an opposition shall not be extended beyond 180 days from the date of publication.” Opposer agreed to the 30 day extension of time since an additional 30 days would not extend the time beyond 180 days as stated in the Rule.
4. Upon further review of Rule 37 CFR 2.102(c)(3), which reads in part, “*After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days.*”, Opposer called the TTAB help desk to further interpret the rule as to whether ONLY a 60 day request was available or if a 30 day request could be made as long as the request for extension did not go BEYOND the 180 days. See Affidavit attached hereto as Exhibit A.
5. Opposer was advised by the TTAB help desk that a 30 day extension of time was available as long as the extension did not extend beyond the 180 days allowed by Rule 37 CFR 2.102(c).
6. When asked how to file for a 30-day period, since this option was not available in the online form, Opposer was advised by the TTAB Help Desk that this submission must be made by first-class mail. Accordingly, this is why we went against usual protocol, as Marshall Law Group always files via online forms when available (can be verified by looking at all of our

filings). Based upon this very specific and rational explanation, we never questioned that the information provided by the Help Desk was incorrect.

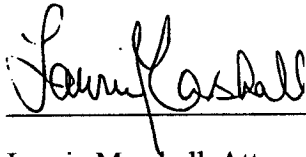
7. Because Applicant initially had only agreed to an additional 30 days, and Applicant was not consistently available for further discussions on that day, and on reliance of the information obtained from the TTAB Help Desk on March 4, 2015, the Opposer filed the 30 day Extension of Time to Oppose with consent as stated therein upon knowledge and belief that the information given to them by the TTAB Help Desk could be relied upon and was a correct interpretation of Trademark Rules.
8. The 30 day Extension of Time clearly stated that the request was on consent by both parties contrary to the statement made in the denial made by the TTAB on March 18, 2015. See highlighted section of 30-day request attached hereto as Exhibit B.
9. The Opposer mailed the 30 day Extension of Time via overnight courier, UPS, before midnight on March 4, 2015 and said delivery was delayed by severe weather as shown on the confirmation of delivery. See UPS delivery confirmation attached hereto as Exhibit C.
10. Had Opposer not received erroneous information from the TTAB Help Desk, Opposer and Applicant (who consented to a 60-day extension on March 4th, but only after the 30-day extension had already been mailed)

would have had further discussions and would have filed a 60-day extension of time on consent via ESTTA and the untimely delivery of the paper request would not have affected this record.

11. Opposer had detrimentally relied upon the Help Desk's information. If the Help Desk is being advertised as a resource, an Opposer should not be punished for its detrimental reliance on the answers and rule clarification requested from and provided by the Help Desk.

WHEREFORE, in view of the foregoing, Opposer respectfully requests the Board reconsider the denial of the request to extend the opposition in view of the reliance by Opposer on information received from the TTAB help desk and reopen said time for opposition and further allow the attached 60-day Extension of Time to Oppose by consent be entered into the record hereto. See Extension of Time to Oppose attached hereto as Exhibit D. In the alternative, if for some reason the Extension of Time to Oppose cannot be entered into the record, Opposer requests the Notice of Opposition attached hereto as Exhibit E be entered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laurie Marshall", is written over a horizontal line.

Laurie Marshall, Attorney for Opposer

Marshall Law Group PLLC

562 West End Avenue, Suite 4A

New York, NY 10024

laurie@tmthespot.com

917-566-1003

Request for Reconsideration

USSN 76/716318

Page 4

CERTIFICATE OF SERVICE

I hereby certify that I serviced a copy of the foregoing Notice of Opposition upon Applicant's counsel by copy thereof in the United States Mail, first class postage prepaid on March 25, 2015 addressed as follows:

Sharona Katon, Attorney

10866 Wilshire Blvd, Suite 970

Los Angeles, CA 90024

On March 25, 2015.

A handwritten signature in black ink, appearing to read "Cate Larson", is written over a horizontal line.

Cate Larson, Paralegal

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the UPS, overnight delivery, in an envelope addressed to:

U.S. Patent and Trademark Office

Madison East, Concourse Level Room C55

600 Dulany Street

Alexandria VA 22314

On March 25, 2015.

A handwritten signature in black ink, appearing to read "Cate Larson", is written over a horizontal line.

Cate Larson, Paralegal

EXHIBIT A

to Request for Reconsideration

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: STARR, MISHA

Application Serial Number: 76716318

Application Filing Date: 05/08/2014

Mark: THEN COMES BABY TRUE TALES OF PARENTHOOD

Date of Publication: 11/04/2014

DECLARATION OF CATE LARSON

Cate Larson declares:

1. I am paralegal for Laurie Marshall, counsel for the Opposer, Sabrina Easterling.
2. On March 4, 2015 on around 2:00 p.m. Central Standard Time, I spoke with Antione (Tony) at the TTAB help desk.
3. Antione and I discussed the interpretation of Rule 37 CFR 2.102(c)(3), as to whether a 30-day extension of time with consent to oppose may be filed instead of a 60-day extension of time with consent as long as the total extension time did not exceed the 180 days prescribed in the Rule.
4. I was told the 30-day Extension of Time with consent would be acceptable as long as the extension request did not exceed the 180 days under the Rule.
5. I then mailed the 30-day Extension of Time via UPS overnight delivery on March 4, 2015 to the overnight delivery address at the TTAB, 600 Dulany Street, Madison East, Concourse Level, Alexandria, VA, 22314-5790.

I declare that the above statements are true and correct to the best of my knowledge , under penalty of perjury of the laws of the United States.

Dated: March 22, 2015


Cate Larson

EXHIBIT B

to Request for Reconsideration

Filing date: 03/04/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: STARR, MISHA

Application Serial Number: 76716318

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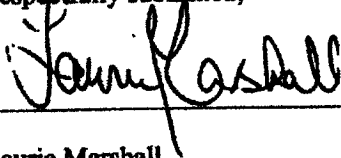
30 Day Request for Extension of Time to Oppose with Consent and for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Sabrina Freidenfelds, 201 Duncan Way, Oakland, CA 94611, UNITED STATES respectfully requests that she be granted an additional 30-day extension of time to file a notice of opposition against the above-identified mark with consent by the Applicant.

Potential opposer believes that good cause is established for this request by:
The potential opposer is engaged in settlement discussions with the Applicant.

The time within which to file a notice of opposition is set to expire on 03/04/2015. Sabrina Freidenfelds respectfully requests that the time period within which to file an opposition be extended until 04/04/2015.

Respectfully submitted,



Laurie Marshall

03/04/2015

Laurie Marshall

Marshall Law Group PLLC

562 West End Avenue Suite 4A

New York, NY 10024

UNITED STATES

legal@tmthspot.com Phone: 917-566-1003

EXHIBIT C

to Request for Reconsideration

We're working to deliver your package as soon as weather conditions allow. Select the Request Status Updates button below to receive email or text updates.

Scheduled Delivery:

Scheduled delivery information is not available at this time. Please check back later.

Last Location:

Alexandria, VA, United States, Friday, 03/06/2015

Shipping Information

To: TRADEMARK TRIAL AND
APPEAL BOARD
U.S. PATENT AND TRADEMARK
OFFICE
600 DULANY STREET
MADISON EAST, CONCOURSE
LEVEL ROOM
ALEXANDRIA, VA, 223145790,
US

Shipped By

UPS Next Day
Air®



Shipment Progress

Location	Date	Local Time	Activity
Alexandria, VA, United States	03/06/2015	1:49 P.M.	Severe weather conditions have delayed delivery.
	03/06/2015	1:49 P.M.	Delivered
	03/06/2015	11:04 A.M.	Out For Delivery
	03/06/2015	9:20 A.M.	Arrival Scan
Charlottesville, VA, United States	03/06/2015	8:34 A.M.	Departure Scan
	03/06/2015	7:28 A.M.	Arrival Scan
	03/06/2015	7:06 A.M.	Severe weather conditions have delayed delivery. / Your shipment is scheduled to arrive today after the delivery commitment time
Louisville, KY, United States	03/06/2015	6:08 A.M.	Departure Scan
Louisville, KY, United States	03/05/2015	10:50 A.M.	Arrival Scan
Chicago, IL, United States	03/05/2015	8:27 A.M.	Departure Scan
	03/05/2015	7:00 A.M.	Severe weather conditions have delayed delivery. / We're working to deliver your package as soon as possible
	03/05/2015	1:06 A.M.	Severe weather conditions have delayed delivery. / Your shipment is scheduled to arrive today after the delivery commitment time
Chicago, IL, United States	03/04/2015	9:36 P.M.	Arrival Scan
Palatine, IL, United States	03/04/2015	8:45 P.M.	Departure Scan
	03/04/2015	4:49 P.M.	The shipment has been dropped off and is now at The UPS Store®
United States	03/04/2015	4:48 P.M.	Order Processed: Ready for UPS

Additional Information

EXHIBIT D

to Request for Reconsideration

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: STARR, MISHA

Application Serial Number: 76716318

Application Filing Date: 05/08/2014

Mark: THEN COMES BABY TRUE TALES OF PARENTHOOD

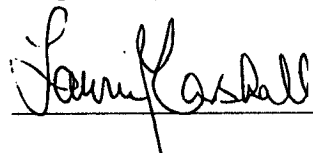
Date of Publication: 11/04/2014

60 Day Request for Extension of Time to Oppose with Consent

Pursuant to 37 C.F.R. Section 2.102, Sabrina Freidenfelds, 201 Duncan Way, Oakland, CA 94611, UNITED STATES respectfully requests that she be granted an additional 60-day extension of time to file a notice of opposition against the above-identified mark with consent by the Applicant.

The time within which to file a notice of opposition is set to expire on 03/04/2015. Sabrina Freidenfelds respectfully requests that the time period within which to file an opposition be extended until 05/03/2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laurie Marshall", is written over a horizontal line.

Laurie Marshall

03/04/2015

Laurie Marshall

Marshall Law Group PLLC

562 West End Avenue Suite 4A

New York, NY 10024

UNITED STATES

legal@tmthespot.com Phone:917-566-1003

CERTIFICATE OF SERVICE

I hereby certify that I serviced a copy of the foregoing Extension of Time to Oppose upon Applicant's counsel by copy thereof in the United States Mail, first class postage prepaid on March 25, 2015 addressed as follows:

Sharona Katon, Attorney

10866 Wilshire Blvd, Suite 970

Los Angeles, CA 90024

On March 25, 2015.



Cate Larson, Paralegal

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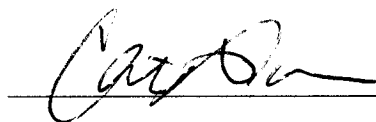
U.S. Patent and Trademark Office

Madison East, Concourse Level Room C55

600 Dulany Street

Alexandria VA 22314

On March 25, 2015.



Cate Larson, Paralegal

EXHIBIT E

to Request for reconsideration

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Sabrina Freidenfelds, an Individual))
)
Opposer,))
))
vs))
))
Misha Starr, an Individual,))
))
Applicant.))

United States Trademark Office
PO Box 1450
Alexandria VA 22313

NOTICE OF OPPOSITION

Sabrina Friedenfelds, (“Opposer”), an Individual, located at 3532
Kempton Way.

Oakland, California, 94611, believes she will be damaged by registration of the mark shown in
Application Serial No. 76/716318 (“Applicant’s Application”) filed May 8, 2014 by Misha Starr
 (“Applicant”), and hereby opposes the same.

A description of the Applicant’s mark follows:

Mark: THEN COMES BABY TRUE TALES OF PARENTHOOD

Serial No.: 76/716318

Filing Date: May 8, 2014

Published: October 4, 2014

Int’l Class: 41

Goods: On-line journals, namely, blogs featuring information on parenting and pregnancy

As grounds for opposition, it is alleged:

1. Opposer is a board certified lactation consultant and a childbirth education with the University of California, San Francisco.
2. Opposer is the Principal of Then Comes Baby, LLC, a limited liability company of the State of California.
3. Opposer began her business in 2010, and since that time has continuously used the name “Then Comes Baby” on her website, business documents and marketing material for her consultations, workshops and classes.
4. Since 2010, Opposer has developed, promoted and offered her services in connection with the name and Mark “Then Comes Baby” throughout the United States in person and on-line.
5. Opposer’s use of the “Then Comes Baby” Mark in connection with her services has been valid continuous use since 2010, and has not been abandoned. The “Then Comes Baby” Mark, by virtue of substantial use, has acquired great value as an indicator of Opposer’s services and distinguishes her from the services of others.
6. Opposer has invested substantial amounts of time, effort and money in developing good will in the “Then Comes Baby” mark throughout the United States. By reason of Opposer’s widespread and continuous use of the “Then Comes Baby” Mark, Opposer has extensive, non-registered statutory and common law rights in “Then Comes Baby”. These rights substantially pre-date any rights that might be claimed by

Applicant.

7. In view of the identical nature of the respective marks, and the identical nature of the services of the respective parties, Applicant's mark so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake or deceive.
8. Applicant has no license, consent or permission from Opposer to use or register the "Then Comes Baby" Mark.
9. Opposer used the "Then Comes Baby" Mark prior to Applicant's first use.
10. By reason of all of the foregoing, Opposer will be gravely damaged by the registration of the Mark shown in Applicant's Application.

WHEREFORE, Opposer prays that Applicant's Application be rejected and stricken, that no registration be issued thereon to Applicant, and that this Opposition be sustained in her favor.

Respectfully submitted,



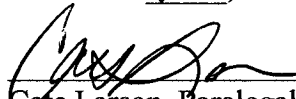
Laurie Marshall, Esq.
Marshall Law Group PLLC
TradeMarks The Spot
562 West End Avenue Suite 4A
New York, New York 10024
Phone: 917-566-1003
legal@tmthespot.com

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On March 25, 2015.

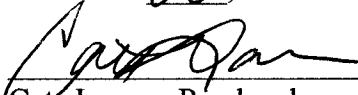

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